

PHILIP A. GICALONE
Claimant

STATE OF KANSAS

AND

STATE SELF-INSURANCE FUND

Docket No. 258,649

¹ See K.S.A. 1999 Supp. 44-508(f).

in claimant's accident was not associated with his employment but was instead a personal risk.

On appeal, claimant contends his left knee injury is compensable because the injury occurred as a result of an accident that occurred on respondent's premises. Furthermore, claimant argues there is no evidence in the record that supports a finding that claimant's preexisting left knee injuries resulted in a permanent condition that caused the accidental injury or that would rise to a level of a personal risk. Thus, the claimant contends his left knee injury was the result of a risk related to his employment and is compensable. Finally, claimant argues he established through his testimony that he could not work as a result of his left knee injury and surgery from the May 2, 2000, accident date through August 13, 2000, when claimant was released by his treating physician to return to work on August 14, 2000. Accordingly, claimant contends he is entitled to 14.86 weeks of temporary total disability compensation.

Respondent, on the other hand, requests the Board to affirm the ALJ's Award that denied claimant's request for workers compensation benefits. Respondent argues claimant's accidental injury did not arise out of and in the course of his employment. First, because claimant was not at work for the employer at the time of the accident. Second, the risk involved in claimant's accident was not related to his employment but was a personal risk and, therefore, not compensable.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record, considering the briefs and the parties' oral arguments, the Board makes the following findings and conclusions:

On May 2, 2000, claimant was employed by respondent at the University of Kansas Medical Center, Kansas City, Kansas, as a police officer. That evening, claimant was on his way to work when he parked his personal car in one of the University of Kansas Medical Center's parking lot which was located adjacent to Dykes Library building. Claimant worked the 10:00 p.m. to 8:00 a.m. shift. The night shift police officers used this particular parking lot for parking because it is close to the main hospital building. The police officer's squad room where they are required to report, before their shift, is located in that building. Also, the parking lot is used by the night shift police officers because it is well lighted.

After claimant parked, he exited his car and took about two or three steps toward the trunk of his vehicle to get his equipment bag, twisted his left knee, something popped in the knee, and claimant caught himself on the car before he hit the ground. Three days later claimant saw Stephen W. Munns, M.D., who practices at the Kansas University Medical Center, for treatment of his left knee injury. Dr. Munns eventually performed surgery on claimant's left knee. The parties stipulated that claimant suffered a 12 percent

permanent functional impairment of the left lower extremity as a result of the May 2, 2000, left knee injury and surgery.

Claimant established through his uncontradicted testimony that he was under Dr. Munns' care and treatment and was taken off work by Dr. Munns from May 2, 2000, his date of accident, until he was released to return to work on August 14, 2000.

Claimant hit his left knee on one occasion in the early 1980s and he required some non-surgical medical treatment. Claimant also fell in August 1998, while at work for the respondent and hurt his left knee and twisted an ankle. Claimant was seen by a doctor for that left knee injury, was taken off work for three days and then returned to his regular work. Claimant has had some occasional pain in his left knee after that incident from over exertion. But he has no weakness or permanent disability in the left knee as a result of either of those incidents.

The Board concludes that the record establishes that claimant injured his left knee on his way to work in a parking lot owned by the respondent. Because claimant was on his way to work when he was injured the "going and coming" rule applies unless the injury occurs on the employers' "premises" or the "special hazard" exception applies.² An employee on his way to work or having left work is subjected only to the same risks as the general public. Those risks are not causally related to the employment. But once the employee reaches the employer's premises, the risks the employee is subjected have a causal relationship to the employment, and injuries suffered on the premises are compensable even if the employee has not yet started working.³ Here, claimant had arrived at the employer's premises at the time he suffered his left knee injury.

The ALJ further found that claimant's left knee injury was not compensable because the injury was a personal risk and not a risk related to his employment. The ALJ concluded, "The risk Claimant was exposed to herein was personal in nature based upon his unrefuted testimony of prior difficulties with his left leg." The ALJ cites, as did the respondent, the Martin⁴ case, as a similar fact situation. In Martin, the claimant had experienced preexisting lower back problems since 1996 and had experienced specific injuries to the low back in 1967, 1970, and 1974. Claimant was denied compensation for a May 28, 1976, low back injury when the court found, based on claimant's history of low back problems, that it was obvious that almost any everyday activity would have a tendency to aggravate his pre-existing condition. Thus, the court concluded claimant's

² See K.S.A. 1999 Supp.44-508(f) and Thompson v. Law Offices of Alan Joseph, 256 Kan. 36, 883 P.2d 768 (1994).

³ See Thompson at 46.

⁴ See Martin v. U.S.D. No. 233, 5 Kan. App. 2d 298, 615 P.2d 168 (1980).

injury was a result of a personal risk and not a risk related to his employment, and therefore, not compensable.⁵

The Board disagrees with the reliance on the Martin case in support of the argument that claimant's injury is not compensable because it was caused by a personal risk and not a risk related to his employment. As noted above, claimant testified he had two previous minor left knee injuries but those injuries left claimant with only residual pain after overexertion and with no weakness or permanent disability. Claimant's preexisting left knee problems do not rise to a level of a personal risk as did claimant's low back problems in Martin. Thus, since claimant was injured in respondent's parking lot while walking to get his equipment bag out of the trunk his left knee injury was the result of a risk related to his employment and is compensable.

The Board concludes that claimant also proved through his uncontradicted testimony that he was temporarily and totally disabled from substantial and gainful employment for the period from his May 2, 2000, date of accident through August 13, 2000, the date he was released to return to work on August 14, 2000. In a workers compensation case, medical testimony is not necessary to establish the nature and extent of claimant's disability.⁶ Claimant's testimony established that he saw Dr. Munns on May 5, 2000, for treatment for his left knee injury. Dr. Munns eventually performed surgery on claimant's left knee and did not release claimant to return to work until August 14, 2000. Thus, the Board concludes claimant proved he is entitled to 14.86 weeks of temporary total disability compensation.

In conclusion, the Board reverses the ALJ's Award that found claimant's left knee injury did not arise out of and in the course of the employment with respondent. The Board finds claimant is entitled to 14.86 weeks of temporary total disability compensation followed by 22.22 weeks of permanent partial disability compensation for a 12 percent permanent partial disability for a scheduled left leg injury.⁷

AWARD

WHEREFORE, it is the finding, decision, and order of the Board that ALJ Steven J. Howard's April 24, 2001, Award is reversed and the Board enters an Award as follows:

WHEREFORE, AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Philip A.

⁵ See Martin at 300.

⁶ See Graff v. Transworld Airlines, 267 Kan. 854, Syl. ¶3, 783 P.2d 258 (1999).

⁷ See K.S.A. 1999 Supp. 44-510d(a)(16).

Gicalone and against the respondent, State of Kansas, and the State's Self-Insurance Fund, for an accidental injury which occurred May 2, 2000, and based upon an average weekly wage of \$832.07.

Claimant is entitled to 14.86 weeks of temporary total disability compensation at the rate of \$338.00 per week or \$5,022.68, followed by 22.22 weeks of permanent partial disability compensation at the rate of \$383.00 per week or \$8,510.26, for a 12 percent permanent partial disability for a scheduled left leg injury, making a total award of \$13,532.94, which is all due and owing and is ordered paid in one lump sum minus any amounts previously paid.

Respondent is ordered to pay all reasonable and necessary medical expenses as authorized medical.

Claimant is entitled to an unauthorized medical allowance in the statutory maximum of \$500.

Claimant is entitled to future medical treatment upon proper application and approval by the Director.

All remaining orders contained in the Award are adopted by the Board.

IT IS SO ORDERED.

Dated this ____ day of November 2001.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: James E. Martin, Attorney for Claimant
Marcia E. Yates, Attorney for Respondent
Steven J. Howard, Administrative Law Judge
Philip S. Harness, Workers Compensation Director